

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Thaddeus Fletcher, #07133-007,)	C.A. No. 4:05-98-CMC-TER
)	
Petitioner,)	
)	
v.)	OPINION and ORDER
)	
John R. Simpson, U.S. Parole Commission;)	
Otis Thomas, Examiner, Parole Commission;)	
Michael Green, Director and Chairman, D.C.)	
Parole Board; and Matthew Hamidullah, Warden, ¹)	
)	
Respondents.)	
)	

This matter is before the court on Petitioner's *pro se* petition for habeas corpus filed pursuant to 28 U.S.C. § 2241. This matter was originally filed in the United States District Court for the District of Columbia, and was thereafter transferred to this court by order of the Honorable John D. Bates, United States District Judge. Petitioner is a District of Columbia parolee who is currently confined at Estill – FCI, having been found in violation of his parole. On March 7, 2005, Respondents moved for dismissal, or in the alternative, for summary judgment of this matter.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Thomas E. Rogers, III for pre-trial proceedings and a Report and Recommendation. On February 6, 2006, the Magistrate Judge issued a Report recommending this matter be statistically stayed pending the resolution of Petitioner's habeas petition which is currently pending in the United States District Court for the District of Columbia.

¹Petitioner originally named "G. Maldonado, Jr." who was the Warden at Estill – FCI. The current warden is Matthew Hamidullah, and Respondents have argued that Hamidullah should be substituted for Maldonado. This court agrees. The Clerk shall amend the record of this case accordingly.

The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Petitioner filed objections to the Report on February 22, 2006.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report and Recommendation only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

This petition is related to another habeas petition, *Fletcher v. Reilly*, District of Columbia Civil Action No. 01-2058 (“The DC Petition”). The DC Petition alleges the application of the United States Parole Commission (USPC) reparole guidelines to Petitioner violates the prohibition against *ex post facto* laws.² The DC Petition was dismissed in 2003. On January 6, 2006, however, the D.C. Circuit reversed the dismissal of the habeas petition and remanded the case to the District Court for further proceedings consistent with *Garner v. Jones*, 529 U.S. 244 (2000), and *Wilkinson*

²The history of the transfer of parole violators such as Petitioner to the USPC is fully explained in *Fletcher v. Reilly*, 433 F.3d 867, 868-72 (D.C. Cir. 2006).

v. Dotson, 544 U.S. 74 (2005). See *Fletcher v. Reilly*, 433 F.3d 867 (D.C. Cir. 2006).

The Petition transferred to this court (“the SC Petition”) alleges a due process violation associated with the denial of parole to Petitioner in 2000. Petitioner argues in his Objections to the Report and Recommendation that the claims in the DC Petition are unrelated to the claims in the SC Petition. However, the relief Petitioner seeks in the SC Petition is the same as that sought in the DC Petition, which is once again pending in the United States District Court for the District of Columbia.³

After reviewing the record of this matter, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court declines to adopt the Report and Recommendation of the Magistrate Judge. Respondents’ motion to dismiss is **denied without prejudice** to the right, if appropriate, to refile a motion which takes into account the present status of the petition pending in the District of Columbia.

³This court is aware that a status conference has been set in the DC Petition, and a related action Petitioner filed pursuant to 42 U.S.C. § 1983 (“DC §1983 Action”), for April 18, 2006. The court directs the United States Attorney for the District of South Carolina to contact Respondents’ counsel in the DC Petition and provide counsel a copy of this order. The Clerk shall also forward a copy of this order to Petitioner’s counsel in the DC § 1983 and habeas actions. This court would request that counsel associated with the DC actions apprise Judge Bates, the presiding judge in the DC actions, of the status of this matter. Petitioner’s counsel in the DC actions are: Timothy P. O’Toole, Esq. and Todd A. Cox, Esq.; Public Defender Service of the District of Columbia, 633 Indiana Ave., N.W., Washington, D.C. 20004. This court requests the United States Attorney for the District of South Carolina notify this court of the result of the hearing currently scheduled for April 18, 2006.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
March 28, 2006

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